

Appl. No. 10/611,997
Amendment dated: May 24, 2005
Reply to OA of: February 24, 2005

REMARKS

Applicants have amended the claims to more particularly define the invention taking into consideration the outstanding Official Action. Claim 13 has been amended as required by the Examiner to clarify which claim 13 depends from which is claim 12. In addition, claim 1 has been amended incorporating the limitation from claim 4 therein and claim 4 has been canceled without prejudice or disclaimer. Also, the subject matter from page 2 lines two to four of the specification has been added to claim 1 as fully supported by the specification. Finally, claims 14 and 15 have been added to the application to further describe the pores as fully supported by Applicants' specification at page 7 with respect to figure 2. Applicants most respectfully submit that all the claims now present in the application are in full compliance with 35 U.S.C. §112 and are clearly patentable over the references of record.

The rejection of claim 13 under 35 U.S.C. §112 has been carefully considered but is respectfully traversed by correcting the dependency of this claim. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claims 1, 2, 4-6 and 9-12 under 35 U.S.C. 103 as unpatentable over Kuslich has been carefully considered but is most respectfully traversed in view of the amendments to the claims and the following comments.

Applicants wish to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

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The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants also most respectfully direct the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence present by applicant.

The cited reference '679 does not suggest how to anchor a tissue to a bone in accordance with the presently claimed invention. On the contrary, the purse-string 62 shown in Fig. 19 of the reference is for closure of the opening of the bag and does not suggest the presently claimed invention to one of ordinary skill in the art.

It is noted in the Official Action that the primary reference fails to teach the claim limitation with respect to the plurality of pores each having a diameter which is less than 0.1mm which is a claim limitation in the presently claimed invention which cannot be ignored. This is said to be an obvious modification in the Official Action but this represents improper hindsight. In re Fritch, 23 USPQ 1780, 1784 (Fed Cir. 1992) ("It is impermissible to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps.). In this regard, the Examiner's attention is most respectfully directed to column 7, lines 17-20 of the patent where it is stated that generally, the pores of the fabric will have a diameter of about 0.25 to about 5.0 mm. This in no way suggests the required limitation of the presently claimed invention. Obvious to try is not the standard of obviousness under 35 USC 103. Accordingly, it is most respectfully requested that this rejection be withdrawn.

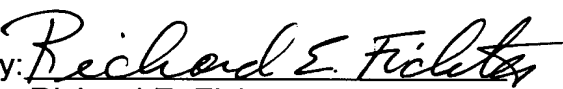
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The rejection of claims 3, 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Eisermann et al. has been carefully considered but is most respectfully traversed in view of the amendments to the claims and the above discussion. Accordingly, it is most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

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